IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

AS.No. 821 of 1997(E)

OS.48/1992 of SUB COURT, OTTAPPALAM
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APPELLANTS/ PLAINTIFFS:
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1. NELLEKKATTU ANAKKUNNATH N. GOPALAN NAIR,
S/O.PUTHURKALATHIL LATE GOPALAN NAIR
RESIDING AT THIRUVEGAPPURA AMSOM AND DESOM
OTTAPPALAM TALUK.

2. N.PADMANABHAN NAIR, S/O.PUTHURKALATHIL LATE
GOPALAN NAIR, RESIDING AT THIRUVEGAPPURA AMSOM
AND DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.P.R.VENKITESH

RESPONDENTS: DEFENDANTS:
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1. NELLEKKATTU ANAKKUNNATH LAKSHMIKUTTY AMMA
D/O.PUTHURKALATHIL LATE GOPALAN NAIR,
THIRUVEGAPPURA AMSOM AND DESOM,
OTTAPPALAM TALUK.

2. RUGMINIKUTTY AMMA, D/O.PUTHURKALATHIL
LATE GOPALAN NAIR, THIRUVEGAPPURA AMSOM AND DESOM,
OTTAPPALAM TALUK.

3. MADHAVIKUTTY AMMA, D/O.PUTHURKALATHIL LATE GOPALAN
NAIR, THIRUVEGAPPURA AMSOM AND DESOM,
OTTAPPALAM TALUK (DIED)
REP. BY HER LEGAL REPRESENTATIVES.

4. SUJATHA, W/O.SUNDARAN, AGED 19 YEARS,
OORATHU PUTHEN VEEDU, PANNIYOOR DESOM,
P.O.ANAKKARA, VIA KUMBIDI.

5. N.RAJAGOPALAN, AGED 14 YEARS (MINOR)
REP. BY HIS NEXT FRIEND
FATHER K.KESAVAN NAIR, KOROTHU HOUSE, OTTAPPALAM.

6. SURYA NARAYANAN, AGED 12 YEARS (MINOR)
REP. BY HIS NEXT FRIEND FATHER K.KESAVAN NAIR,
KOROTHU HOUSE, OTTAPPALAM.
BY ADV. SRI.P.CHANDRASEKHAR

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S.No. 821 of 1997

Dated this the 16th October, 2007.

J U D G M E N T

The plaintiffs in O.S.No.48/1992, on the file of the Sub Court, Ottappalam, are the appellants. The appeal is filed against the decree and judgment passed by the trial court, dismissing the suit filed by the appellants for partition. For clarity, the parties will be referred to as arrayed in the plaint.

2. The short facts necessary for the disposal of the appeal are as follows. Plaintiffs and defendants 1 to 3 are the children of deceased Gopalan Nair. Plaintiffs filed the suit for partition of their 2/5 shares in the suit property alleging that the properties, plaint A and B schedules, were properties owned by deceased Gopalan Nair. He got the properties under the Partition Deed, dated, 16.6.1976. Gopalan Nair died on 7.7.1979. It was averred that after the death of Gopalan Nair, plaintiffs and defendants are in joint possession of the properties as co-owners. B Schedule are the movables owned by Gopalan Nair. It was averred that plaintiffs and defendants are

entitled to 1/5 share each. It was also averred that after the death of Gopalan Nair, 3rd defendant, one of his daughters, was in possession of the property and as she was ill, she was not regular in paying the share of profit. It was also averred that on 10.12.1991, plaintiffs issued a notice demanding partition of that 2/5 shares, to which the defendants had issued a reply notice on 19.12.1991, contending that the deceased had executed a Will on 17.5.1979, bequeathing all his movable, as well as immovable properties, in favour of his three daughters. It was averred that the father had no special consideration for his female children or his daughters, and they had exerted undue influence on the father, who was unable to take any decision of his own. It was averred that the Will did not take effect, and the Will is not genuine. Hence, they prayed for partition of their share.

3. The first defendant did not file any written statement. Defendants 2 and 3 filed a joint written statement denying the right claimed by the plaintiffs. It was contended that Gopalan Nair was having disposing mind, and he was fully aware of the nature and consequence of his act and with full knowledge, he had executed a Will, on 17.5.1979, bequeathing all his movable and immovable

properties owned by him as on that day, and also the properties which he may acquire in future, in favour of his three daughters. It was averred that after the death of Gopalan Nair, defendants are in possession of the properties as absolute owners. It was also averred that the plaintiffs were aware of the execution of the Will, even on the date of its execution, and it was the daughters who looked after Gopalan Nair. It was also contented that plaintiffs were residing else where in connection with their jobs, and they were well placed. It was also contented that they neglected to look after their father, and the relationship between the sons and father were strained. All averments made in respect of the Will were denied. The averments that the father was not in a position to take his own decisions and he was not having a stable mind were denied. It was contended that Will was executed as genuine and valid. The averment that the movable shown in the B Schedule belong to the deceased Gopalan Nair was also denied. It was contended that all the movables belong to the defendants. It was also contended that after the death of their mother, defendants made a demand for partition of estate left by mother, and because of that enmity, the suit was filed.

4. The trial court raised the following issues.

1)Whether the will relied on by the defendants is true or valid ?

2)Whether there are any movables to be partitioned, and to what property, if any, plaintiffs are entitled.

5. The deceased Gopalan Nair was the absolute owner of plaint item Nos.1 to 3 in plaint A Schedule was admitted by both sides. Late Sri.Gopalan Nair had seven children. In addition to the plaintiffs and defendants 1 to 3, he had two more sons. According to the plaintiffs, those two sons died, and their rights also devolved upon plaintiffs and defendants. It was contended that each of them are entitled to 1/5th share. The claim for partition was resisted on the strength of Ext.B1 Will. Trial Court found that Ext.B1 is genuine and valid, and hence, dismissed the suit. So, the crutial question arising for consideration in this appeal is whether the finding of the trial court that Ext.B1 is genuine and valid is correct.

6. The learned counsel appearing for the appellant has argued that the Will is an unnatural one. It is argued that the deceased Gopalan Nair was a Village Officer, who got the same as hereditary appointment. According to the appellants, Gopalan Nair had no reason to show any special consideration towards daughters alone. It is argued that absolutely no reason what so ever is stated to disinherit two sons alone in Ext.A1. It is also contented that the materials on record will show that the husband of the 3rd defendant exerted undue influence and got Ext.B1 executed.

7. The evidence on record shows that the first plaintiff was working as a teacher. His wife was also working as a teacher. The second plaintiff was working as a clerk in the Revenue department, and he had also worked as a Revenue Inspector for some time. They were financially well off. It is not disputed that the daughters are unemployed.

8. I shall first consider how far the execution of Ext.B1 is properly proved. DW.1 is an attestor to Ext.B1 document. He was working as an Assistant of a scribe by name Balakrishnan Nair. Ext.B1

Will was written by him. DW.1 deposed that when the case was taken up for evidence, Balakrishnan Nair was laid up due to cancer. He deposed that for more than 25 years, he was writing documents as an assistant to Balakrishnan Nair. He gave evidence to the effect that Gopalan Nair affixed signature to Ext.B1 at the office of the scribe. He also deposed that himself and Kesavan Nair had seen the executant signing the Will and thereafter the witnesses had signed. He also deposed that executant had seen the attestors affixing the signature. He also deposed that when Gopalan Nair came to the office of the scribe, he was there. He had prior acquaintance with Gopalan Nair. He also gave evidence to the effect that Gopalan Nair was having disposing mind, and he was not suffering from any disease or illness. He also deposed that before signing the document, the contents were read over to Gopalan Nair. Of course, during cross examination, he had admitted that one of the attestors to the document was the son-in-law of the executant . The son-in-law requested him to come to court and give evidence. He admitted that on the date of execution of Ext.B1, the son-in-law of Gopalan Nair was with him and he had signed as an attestor to the document. It was also admitted that Kesavan Nair was present in the Sub Registrar's office also.

9. The learned counsel for the appellant has argued that DW.1 deposed that Gopalan Nair gave instructions for preparing Ext.B1, the day after the date of execution of the same. It is true that he deposed that instructions for preparation of document was given after its registration. A reading of his evidence, as a whole, will show that Gopalan Nair gave instructions for preparation of the documents, on the previous day of registration of the document. Merely because he made a mistake, it cannot be held that his entire evidence is unreliable. He also deposed that he got licence as a scribe in the year 1980, and prior to that date, he may have attested number of documents. Though a suggestion was put to DW.1 that document was executed as per the directions of Kesavan Nair, there is absolutely nothing in the evidence of DW.1 to indicate that Kesavan Nair played any prominent role in the getting Ext.B1 executed. It is to be noted that even according to the plaintiffs, the 3rd defendant was residing with Gopalan Nair, and she was looking after him. So, there is nothing unnatural in her husband accompanying Gopalan Nair to the office of the scribe or to the Sub Registrar's office. DW.1 gave evidence to the effect that Gopalan Nair signed the document after getting it read by the scribe. It is argued that there is absolutely nothing on record to

show that the contents of the document was read over to the Gopalan Nair, at the office of the Registrar. Ext.B1 shows that document was presented for registration by Gopalan Nair and endorsement made by the Sub Registrar shows that Gopalan Nair had admitted execution of the document in front of the Sub Registrar also. No attempt was made by the plaintiffs to disprove the endorsement contained in Ext.B1. So, it is not possible to hold that Kesavan Nair played any prominent role or exerted undue influcence on Gopalan Nair to get Ext.B1 document executed.

10. It is argued that plaintiffs were totally disinherited. It is true that what ever assets left by Gopalan Nair on the date of execution of Ext.B1 document were bequeathed in favour of the three daughters. In the plaint, plaintiffs have got a case that the relationship between the plaintiff and the father were very cordial, and in fact, DW.1 was sending money to father also. Ext.A3 series shows that between 10.8.1964 and 7.8.1965, he sent certain amounts to the deceased, by way of money orders. There is evidence to show that thereafter the relationship between father and sons became strained. The evidence adduced in the case shows that there was civil case

between the father and sons. Ext.B2 is the original of a reply notice issued by the first plaintiff to the Advocate engaged by his father. A reading of Ext.B2 shows that the relationship between the first plaintiff and his father was strained. The son had accused his father as a person speaking falsehood, and who had made up his mind to destroy the family life of his own son. There is evidence to show that Gopalan Nair gave some properties to his sons which was again partitioned. The extent of properties involved was only one Acre 27 cents. There is nothing strange in a father giving that property to his daughters alone, especially, taking into account the fact that they were uneducated and were not having any substantial assets compared to their brothers.

11. It is argued that Gopalan Nair was not having disposing state of mind. The material available on record shows that in fact though such an averment was made in the plaint, at the time of giving oral evidence, PW.1 had no such case. PW.1 gave evidence to the effect that Gopalan Nair was suffering from Artheritis. As I have already stated, he was working as a Village Officer. There is nothing on record to show that he was not having disposing mind, on the date

of execution of Ext.B1 Will. So, the contention of the plaintiffs that Ext.B1 was brought into existence, playing fraud, coercion or undue influence, on Gopalan Nair is not established. The finding of the court below that it is a valid and genuine document is perfectly correct, and does not call for interference. There is no merit in this appeal and it is only to be dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

A.S.No.821 of 1997

J U D G M E N T

Dated:16th October, 2007.